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SAVE OUR FOREST ASSOCIATION, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION – RIVERSIDE

BLUETRITON BRANDS, INC.,

Plaintiff,

vs.

UNITED STATES FOREST SERVICE, *et al.*,

Defendants.

Case No.: 2:24-cv-09720-JGB-DTB

DECLARATION OF RACHEL DOUGHTY

Date: January 13, 2025

Time: 9:00 a.m.

Courtroom: 1

Judge: Hon. Jesus G. Bernal

Action Filed: August 6, 2024

I, Rachel Doughty, do declare and state:

1. If sworn as a witness, I could and would testify to my personal knowledge of the facts set forth herein.

2. I am presently counsel for Save Our Forest Association, Inc. (“SOFA”), which has sued the United States Forest Service (“USFS”) in the Central District of California, Eastern Division, case no. 5:24-cv-01336-JGB-DTB, filed June 25, 2024. This case seeks an order that the Forest Service must vacate Special Use Permit FCD728503 (“2023 SUP”), enjoining the USFS

1 from approving or allowing any third party to divert water from Strawberry Canyon by entry onto
2 USFS land unless and until the USFS has performed a new or supplemental environmental
3 analysis, and ordering the USFS to ensure that the diversion structures in Strawberry Canyon are
4 removed and the ecosystem is restored. The 2023 SUP has expired and the USFS has declined the
5 application of BTB for a new SUP.

6 3. In addition to my present representation of SOFA, I represented The Story of Stuff
7 Project (“**The Project**”) in prior litigation and administrative proceedings regarding BTB’s
8 diversion of water from Strawberry Canyon since 2015. On behalf of SOFA, Courage Campaign,
9 and The Project I have submitted dozens of FOIA and PRA requests to various agencies, and
10 reviewed the responses to similar requests of allies of my clients, seeking documents to determine
11 why Strawberry Canyon has been dewatered and the extent of the resultant harm. I have also
12 reviewed all of the documents admitted as evidence in the SWRCB’s hearing regarding BTB’s
13 water rights in Strawberry Canyon.

14 4. In addition to SOFA and the Project, Courage Campaign, Sierra Club, the Audubon
15 Society, League of Women Voters San Bernardino Area, Southern California Native Freshwater
16 Fauna Working Group, Ekō, the Center for Biological Diversity, Tri County Conservation League,
17 as well as thousands of individuals have all contributed time, money, and human resources to the
18 effort to stop the diversion of water from Strawberry Canyon and restore the natural resources of
19 this public land in the San Bernardino National Forest.

20 5. Media attention to the matter has also been considerable and sustained, reflecting
21 the intense public interest in the matter. Award winning environmental journalist Ian James of the
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1 Los Angeles Times, for instance, has written multiple stories about BTB and its predecessors’
2 water diversions in Strawberry Canyon.¹

3 6. The Hotel Property had previously been owned by Campus Crusade for Christ.
4 BTB, by contract, has delivered some portion of the water it diverts to the Hotel Property since
5 around 1931, including now to the present owners, the Yuhaaviatam. It is my understanding that
6 BTB is not bottling any of the water it diverts and has not done so since 2023, but is delivering
7 water to the present owner of the Arrowhead Hotel. *See* 65-10, ¶ 9. The USFS has never issued a
8 diversion SUP to any owner of the Arrowhead Hotel.

9 7. In January 2010 Campus Crusade for Christ successfully sought annexation of the
10 Hotel Property to the City of San Bernardino. I’ve attached as **Exhibit 1** a true and correct copy of
11 the Local Agency Formation Commission County of San Bernardino (“**LAFCO**”) Resolution No.
12 3088 annexing the Hotel Property to the City of San Bernardino. The annexation included the area
13 of the Arrowhead Springs Specific Plan (“**ASSP**”), which “anticipates a total of 1,350 residential
14 dwelling units, 600 hotel rooms, a golf course and 1,044,646 gross square feet of commercial
15 space.” *See* **Exhibit 2**, a true and correct copy of the October 10, 2006, LAFCO 3053 Staff Report,
16 at page 15. The Fiscal Impact Report for the ASSP identified the Del Rosa Mutual Water
17 Company as the source of water for the domestic water needed for the ASSP, which staff found
18 sufficient to supply 1,350 dwelling units, two major hotels, and significant commercial/office
19 space.” (Exhibit 2, pp. 15-16.) The LAFCO 3053 Staff Report suggests that two shares are needed
20 for each equivalent drinking unit and that Campus Crusade for Christ owned 3,729 of these shares
21 and the City of San Bernardino Municipal Water Department held 582 of these shares. (Exhibit 2,
22 p. 16.) Irrigation for the ASSP would be provided by the West Twin Creek Water Company, 443

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24 ¹ The latest as of the date of this declaration is available here: <https://www.latimes.com/environment/story/2024-08-07/arrowhead-bottled-water-permit> (last accessed Aug. 10, 2024).

1 shares of which were owned by Campus Crusade for Christ. (Exhibit 2, p. 17.) The LAFCO
2 documents were obtained by SOFA in a request made to the San Bernardino Municipal Water
3 District (“**SBMWD**”). I was cc’d on the Public Records Act correspondence, and so know it to be
4 authentic.

5 8. The Yuhaaviatam Clan, of the Maara’yam (Serrano), sometimes called the San
6 Manuel Band of Mission Indians (“**Nation**”) purchased the historic Arrowhead Hotel property
7 (“**Hotel Property**”) with its entitlements in 2016; it had been offered for \$60 million. The Nation
8 own the Arrowhead Hotel in fee simple; the property is not reservation land.

9 9. The Nation also acquired the Campus Crusade for Christ’s shares in the Del Rosa
10 Mutual Water Company in 2016 and the remaining Del Rosa Mutual Water Company shares in
11 2019 from the City, making the Nation the sole owners of the company. Del Rosa Mutual Water
12 Company’s wells produced 1,900 acre feet in 2019. The information in this paragraph was drawn
13 from **Exhibit 3**, a true and correct copy of the January 25, 2019, article *San Bernardino Sells its*
14 *Share of Historic Del Rosa Mutual H2O Co. for Less than \$2,300*, available at
15 [https://sbcsentinel.com/2019/01/sb-sells-it-share-of-historic-del-rosa-mutual-h2o-co-for-less-than-](https://sbcsentinel.com/2019/01/sb-sells-it-share-of-historic-del-rosa-mutual-h2o-co-for-less-than-2300/)
16 [2300/](https://sbcsentinel.com/2019/01/sb-sells-it-share-of-historic-del-rosa-mutual-h2o-co-for-less-than-2300/) (last accessed Jan. 10, 2025).

17 10. I have attached hereto as **Exhibit 4**, The Project’s closing brief in the administrative
18 proceeding resulting in the SWRCB Order.²

19 11. I have attached hereto as **Exhibit 5** the testimony of Gregory Allord, formerly of
20 the United States Geological Service, along with qualifications, **Exhibit 6**, and slides, **Exhibit 7**.

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24 ² Exhibits referenced in the exhibits attached to this declaration which are from the hearing on the SWRCB Order are available on the SWRCB’s website.

1 12. I have attached hereto as **Exhibit 8**, a true and complete copy of special use permit
2 no. FCD728503, issued to BTB in February 2023, and which expired on August 24, 2023. I
3 obtained this through a FOIA request to the USFS.

4 13. I have attached hereto as **Exhibit 9**, a true and correct copy of excerpts of the Land
5 and Resource Management Plan for the San Bernardino National Forest. I obtained this from the
6 USFS website.

7 14. I have attached hereto as **Exhibit 10**, a true and correct copy of excerpts of Forest
8 Service Handbook 2509.22. I obtained this from the USFS website.

9 15. I have attached hereto as **Exhibit 11**, a true and correct copy of the July 27, 2018,
10 Decision Memo of the USFS authorizing Nestlé to occupy a portion of the SBNF with its
11 diversion equipment. I obtained this from the USFS website.

12 16. On September 29, 2023, the Forest Service sent a letter to BTB requesting
13 information and a plan for how BTB was going to comply with state law in light of the State's
14 ruling on the draft 2021 Cease and Desist Order for unauthorized diversion or use of water. A true
15 and correct copy of this letter, obtained by FOIA from the USFS, is attached hereto as **Exhibit 12**.

16 17. On November 20, 2023, the Forest Service reiterated its request for information,
17 having provided BTB additional time to respond. A true and correct copy of this letter, obtained by
18 FOIA from the USFS, is attached hereto as **Exhibit 13**

19 18. In reviewing BTB's application for a renewal of its SUP, on March 1, 2024, the
20 Forest Service sent a letter to BTB identifying certain information that was missing and that the
21 Forest Service required to make its determination. A true and correct copy of this letter, obtained
22 by FOIA from the USFS, is attached hereto as **Exhibit 14**. After receiving a response from BTB,
23 the Forest Service, on March 25, 2024, repeated its requests for information that had not been
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1 provided, and specified further information that was required. A true and correct copy of this
2 letter, obtained by FOIA from the USFS, is attached hereto as **Exhibit 15**. Despite these
3 clarifications, BTB again failed to provide the requested information, and on April 18, 2024, the
4 Forest Service once again set forth the information that was missing, the information that was
5 requested, and again asked BTB to comply. A true and correct copy of this letter, obtained by
6 FOIA from the USFS, is attached hereto as **Exhibit 16**. BTB once again failed to provide the
7 requested information, and on April 24, 2024, the Forest Service sent yet another letter specifying
8 what information it required to process the application. A true and correct copy of this letter,
9 obtained by FOIA from the USFS, is attached hereto as **Exhibit 17**. BTB provided some
10 information on May 14, 2024, but on May 4, 2024, the Forest Service explained that the
11 information BTB had provided to date was insufficient, and the it still required the requested
12 information. A true and correct copy of this letter, obtained by FOIA from the USFS, is attached
13 hereto as **Exhibit 18**. BTB once again fell short, and on June 21, 2024, the Forest Service provided
14 BTB yet another opportunity to provide the requested information. A true and correct copy of this
15 letter, obtained by FOIA from the USFS, is attached hereto as **Exhibit 19**. After four months of
16 trying to obtain the required information from BTB, and after six different letters explaining
17 exactly what it was asking for, the Forest Service notified BTB that it was terminating the permit.
18 A true and correct copy of this correspondence, obtained by FOIA from the USFS, is attached
19 hereto as **Exhibit 20**.

20 19. In May 2024, BTB sent a letter in response to the USFS, of a sort, a true and correct
21 copy of which is attached hereto as **Exhibit 22**, and which was also obtained by FOIA from the
22 USFS.
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1 20. A true and correct copy of the article *Arrowhead bottler: Most water piped from*
2 *national forest is returned to ground or supplied to tribe*, Desert Sun (Oct. 14, 2021), obtained by
3 me from the internet and last accessed on January 10, 2025, at
4 [https://www.desertsun.com/story/news/environment/2021/10/14/arrowhead-bottler-most-water-](https://www.desertsun.com/story/news/environment/2021/10/14/arrowhead-bottler-most-water-we-pipe-forest-returned-given-tribe/5892778001/#:~:text=Facing%20criticism%20for%20wasting%20water,to%20a%20Native%20American%20tribe)
5 [we-pipe-forest-returned-given-](https://www.desertsun.com/story/news/environment/2021/10/14/arrowhead-bottler-most-water-we-pipe-forest-returned-given-tribe/5892778001/#:~:text=Facing%20criticism%20for%20wasting%20water,to%20a%20Native%20American%20tribe)
6 [tribe/5892778001/#:~:text=Facing%20criticism%20for%20wasting%20water,to%20a%20Native](https://www.desertsun.com/story/news/environment/2021/10/14/arrowhead-bottler-most-water-we-pipe-forest-returned-given-tribe/5892778001/#:~:text=Facing%20criticism%20for%20wasting%20water,to%20a%20Native%20American%20tribe)
7 [%20American%20tribe](https://www.desertsun.com/story/news/environment/2021/10/14/arrowhead-bottler-most-water-we-pipe-forest-returned-given-tribe/5892778001/#:~:text=Facing%20criticism%20for%20wasting%20water,to%20a%20Native%20American%20tribe) is attached hereto as **Exhibit 21**.

8 21. Although my firm and my clients have reached out to the Nation since at least
9 2018, we had never until recently gotten a response. The Nation did not participate in the
10 SWRCB's proceedings, although they were aware of the proceedings and did correspond with the
11 Hearing Officer regarding matters such as access to the Hotel Property. On January 8, 2025, I met
12 with legal counsel for the Nation for the first time. Counsel for the Nation stated that the Nation
13 has never applied to the USFS for a SUP to divert water from Strawberry Canyon and confirmed
14 that the Nation presently has no such SUP.

15 22. My client and other members of the public continue to send public records requests
16 to the US Forest Service and to obtain documents in response. We have seen no evidence that BTB
17 has submitted any information explaining or supporting a basis for its rights to water in support of
18 the application for the SUP the US Forest Service denied.

19 23. My client and other members of the public have hiked in the area of the Springs,
20 from which it is reported to me that water continues to be diverted.

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22 I make this declaration under penalty of perjury under the laws of the United States of
23 America, executed this 10th day of January, 2025, in Berkeley, California.

By: */s/ Rachel Doughty*

RACHEL DOUGHTY